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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B5

FILE:

Office: TEXAS SERVICE CENTER Date: **FEB 14 2011**

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a physician. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a statement. For the reasons discussed below, we uphold the director's determination that the petitioner, an endocrinologist who completed her fellowship training in endocrinology two months before filing the petition, has not established her eligibility for the benefit sought. As will be discussed below, one of the bases of eligibility claimed, a shortage of endocrinologists, falls under the jurisdiction of the Department of Labor. Section 212(a)(5)(A) of the Act. The remaining evidence falls so far short of the hyperbolic language used in some of the reference letters as to diminish the credibility of those letters. Ultimately, the petitioner has not demonstrated why the alien employment certification process will not serve the national interest in this matter.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a medical degree from the [REDACTED]. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. We include the term "prospective" to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The petitioner submitted several articles discussing a shortage of endocrinologists in the United States. The inclusion of these articles suggests that the request for a waiver of the alien employment certification process is based, at least in part, on a shortage of endocrinologists. The assertion of a labor shortage should be tested through the alien employment certification process. *Id.* at 220. The issue of

whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

Counsel initially asserted that an employer seeking an alien employment certification from the Department of Labor may only include those job requirements normally required for the job. Counsel continues that these normal job requirements "fall short in consideration of the nature of [the petitioner's] work in endocrinology, because the factors relating to this scientific technique transcend the 'context' of any specific employer's 'business' operation." Counsel notes that "understanding and properly diagnosing and treating serious disorders" have intrinsic merit relating directly to the national interest. Counsel concludes:

Establishing "business necessity" for "unduly restrictive" requirements is outside the scope of the instant petition. **As a physician, [the petitioner] is directly responsible for saving lives. Such skills cannot be measured in the context of business necessity.**

(Emphasis in original.) Counsel's assertions regarding the inapplicability of the alien employment certification process appear to relate to all physicians, all of whom diagnose and treat patients and are evaluated based on their clinical skills. There is, however, no blanket waiver for all competent physicians. We note that Congress did create a limited waiver of the alien employment certification process for physicians working in shortage areas or veterans facilities. Section 203(b)(2)(B)(ii) of the Act. The petitioner does not seek a waiver under that provision.

We concur with the director that the petitioner works in an area of intrinsic merit, endocrinology. The director then concluded that the petitioner was spending sufficient time conducting research such that the proposed benefits would be national in scope. In her initial cover letter, counsel asserted that the petitioner has reached a large and distinguished audience through her publications and presentations and "frequently diagnoses and treats patients" on referral. Counsel further asserted that the petitioner is able to perform "such advanced procedures that only a very small percentage of her peers are able to perform." Counsel stated that the petitioner then teaches these procedures to both junior and senior peers, "creating a ripple effect that is making the performance of these procedures more widespread nationally." Counsel does not assert that the petitioner developed the techniques themselves or a widely adopted means of teaching these techniques to distinguish the petitioner from the endocrinologist who taught him these techniques.

In addressing what benefits might be national in scope in *NYS DOT*, the AAO stated:

[T]he analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. For instance, pro bono legal services as a whole serve the national

interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. Significantly, Congress is presumed to be aware of existing administrative and judicial interpretation of statute when it reenacts a statute. See *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). In this instance, Congress' awareness of *NYSDOT* is a matter not of presumption, but of demonstrable fact. In 1999, Congress amended section 203(b)(2) of the Act in direct response to the 1998 precedent decision. Congress, at that time, could have taken any number of actions to limit, modify, or completely reverse the precedent decision, such as by applying the waiver to all physicians or general surgeons. Instead, Congress let the decision stand, apart from a limited exception for certain physicians working in shortage areas, as described in section 203(b)(2)(B)(ii) of the Act. As stated above, while the petitioner submitted an article about a shortage of general surgeons, the petitioner does not seek a waiver under this provision. Because Congress has made no further statutory changes in the decade since *NYSDOT*, we can presume that Congress has no further objection to the precedent decision.

Applying the above reasoning quoted from *NYSDOT*, 22 I&N Dec. at 217, n.3, to the matter before us, the treatment of patients at a single hospital does not result in benefits that are discernible at the national level. Similarly, training colleagues in procedures developed by others provides benefits that are negligible at the national level. Thus, the only proposed benefits of the petitioner's work that could be national in scope are those resulting from her research.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original

innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Initially, counsel asserted that the petitioner is a member of "prestigious organizations" that limit membership "to those physician-scientists who have attained an extraordinary level of expertise in endocrinology unparalleled by their colleagues." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted evidence of her membership in the [REDACTED] the [REDACTED] the [REDACTED], the [REDACTED] and the [REDACTED]. The petitioner also submitted evidence that, based on examination results, she is a certified Diplomate in internal medicine through the [REDACTED].

The petitioner's membership in the [REDACTED] was at the "fellow/student associate" level. On July 11, 2008, the petitioner was advised that, based on her completion of her formal training, she was eligible to become an active member. According to the materials submitted by the petitioner [REDACTED] is open to "physicians with special education, training and interest in the practice of clinical endocrinology." [REDACTED] is open to any "individual with a doctoral degree (or research experience equivalent to that required for such a degree) who has demonstrated a major and continuing interest in the field of bone and mineral metabolism." Applicants are "encouraged to have published at least one creditable paper, monograph, or other publication in the field of bone and mineral research." The petitioner did not provide the membership requirements for the [REDACTED] or the [REDACTED]. As stated above, certification by [REDACTED] is based on demonstrated competency in a specialty based on examination results.

Professional memberships are one of the types of evidence that may be submitted to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). Because exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement, arguments hinging on professional memberships, while relevant, are not dispositive to the matter at hand. *See NYSDOT*, 22 I&N Dec. at 222. As discussed above, the record contains no evidence that membership in the above societies is limited to those who have influenced the field or are otherwise indicative of the petitioner's influence in the field.

On appeal, counsel reverses her initial claims about the petitioner's memberships. Specifically, counsel now acknowledges that "these societies do not require outstanding achievements on the part of their members." She asserts, however, that "this is not the norm with regard to American medical societies." Even assuming that, in general, U.S. medical societies require only a certain level of education, interest or competency, that fact does not make the petitioner's memberships more meaningful. That the

petitioner has chosen to join multiple societies open to trained endocrinologists rather than one is not persuasive evidence of her influence in the field.

The petitioner submitted evidence that she began earning \$140,000 on July 1, 2008, seven years after receiving her medical degree. The petitioner also submitted evidence that the median salary for endocrinologists with five to seven years of experience is \$157,084. Previously, the petitioner earned \$45,500 annually from July 1, 2003 to June 30, 2004, \$55,114 in 2006, \$44,122 from July 1, 2005 through June 30, 2007 and \$49,580 from July 1, 2007 through June 30, 2008. Once again, these numbers do not exceed the mean for the number of years of experience as documented in the record.

Even if the petitioner had demonstrated that her salary was notable, a salary indicative of exceptional ability is another type of evidence that may be used to establish exceptional ability. Once again, exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement. Thus, arguments hinging on the petitioner's salary, while relevant, are not dispositive to the matter at hand. *See id.* at 222.

The record contains letters that counsel characterizes as job offers. This evidence actually consists of promotional materials soliciting job applications. The record contains no evidence that these employers actually offered the petitioner employment. Regardless, the petitioner's ability to secure employment in his field is not evidence that the alien employment certification process should be waived. We reiterate that any shortage of endocrinologists is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner submitted a September 19, 2007 email from [REDACTED] of [REDACTED] discussing the petitioner's participation with the development of *The [REDACTED]*. The petitioner was to write board review questions on Endocrinology. The petitioner also submitted an "Endocrinology Question Subset," purportedly from the above publication, but it bears no indicia of publication, such as page numbers. The Internet materials submitted are for the fourth edition. It remains that the petitioner has not demonstrated that she is a credited author for any published edition of the *Cleveland Clinic Intensive Review of Internal Medicine*.

The petitioner submitted evaluations of her performance as an employee. While these evaluations may demonstrate her value to her employers, at issue is not whether the petitioner is a competent physician but whether she has demonstrated her influence in the field.

The petitioner submitted several grand round and resident/intern morning reports. These appear to be routine internal presentations whereby interns and residents share their experiences. The record lacks any evidence that these presentations have had a wider influence in the field.

The petitioner submitted an email to staff at [REDACTED] advising of the latest "Endo/Repro I Year 1 Classroom locations." The list of courses includes the petitioner as the teacher of two courses on growth hormones. As discussed above, a local teacher does not impart a benefit at the national level.

The petitioner also submitted materials about conferences she has attended as a participant. The record does not establish that the petitioner presented her work at these conferences. The petitioner has not established that attending conferences goes beyond the routine activities in which endocrinologists engage to stay current in the field.

The petitioner initially submitted two published articles and an unpublished manuscript. The petitioner also submitted four abstracts published as of the date of filing. In response to the director's request for additional evidence, the petitioner submitted additional abstracts and a newly published article that postdate the filing of the petition. The petitioner must demonstrate her eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, we will not consider research disseminated to the field after that date.

Counsel initially asserted that the petitioner published her work "in some of the most esteemed journals" and presented her work at "prestigious national and international meeting." We will not presume that every article in a prestigious journal or presentation at a national or international conference ultimately influences the field. While the articles and abstract predating the filing of the petition demonstrate that the petitioner has disseminated her work, at issue is the ultimate influence of that disseminated work.

Counsel initially asserted that the petitioner's work "has been widely cited [sic] on the internet and used as a reference by other authors." As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. As part of an exhibit entitled "citations," the petitioner submitted an article by [REDACTED] discussing the petitioner's study in one paragraph and concluding "These findings suggest that the NCEP ATP III guidelines on metabolic syndrome do have clinical relevance, according to the researchers." [REDACTED] does not credit the petitioner with developing the guidelines. Moreover, by using the word "suggest" and the phrase, "according to the researchers," [REDACTED] does not appear to find the petitioner's study conclusive.

The petitioner also submitted a summary of the petitioner's study that quotes the petitioner posted at www.consultantlive.com. The 2007 preface to the summary states: "This study was published as an abstract and presented orally at a conference. These data and conclusions should be considered to be preliminary published in a peer-reviewed publication." A similar article appears at *MedPage Today* with the same disclaimer. In addition, the petitioner submitted a link to her online publication. A link demonstrates accessibility rather actual reliance as may be demonstrated by a citation.

The petitioner submitted an exhibit entitled "Impact of Research Projects." The exhibit includes an article about a call for a comprehensive treatment regimen for patients with pre-diabetes using a two-

pronged approach and related articles. Counsel notes that the petitioner was already involved in such research. The exhibit also includes an article reporting that [REDACTED] was terminating the development of an inhaled insulin treatment for diabetics. Counsel notes that the petitioner is involved in a current trial to evaluate an insulin spray. Finally, the exhibit includes articles regarding the difficulty in diagnosing recurrence of thyroid cancer. Counsel asserts that the petitioner's "current research may help to alleviate this problem."

Contrary to the title of this exhibit, this evidence does not demonstrate the "impact" of the petitioner's research projects. Rather, they demonstrate the importance of the petitioner's area of research, which we have already acknowledged above. As stated above, we do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22-I&N Dec. at 218.

Under an exhibit entitled "Awards, Honors and Distinctions," the petitioner included her certificate for completion of her "Fellow in graduate training" at the [REDACTED]. Completing a training program, even a competitive program at a prestigious institution, is not an award, honor or distinction. Experience and skills can be enumerated on an application for alien employment certification and cannot serve as a basis for a waiver of that requirement. *Id.* at 221.

The petitioner also submitted a "Certificate of Recognition" from the [REDACTED] for "participating" at an [REDACTED] annual meeting with a poster presentation. This certificate does not single out the petitioner's presentations from the other poster presentations at the meeting. The petitioner also submitted evidence [REDACTED] "awarded" her credit for continuing medical education. The petitioner has not explained how confirmation of participation at a professional event or completion of professional continuing education is an award, honor or distinction.

The petitioner also submitted evidence that the [REDACTED] awarded the petitioner a 2008 Preceptorship. During this program "fellows participate in specialty clinics and are introduced to research approaches and techniques that are particularly useful in these subspecialty areas." This program appears to be admission to a training program rather than recognition for past influence in the field.

The petitioner submitted evidence that the [REDACTED] awarded the petitioner one of 250 "travel awards" to attend a "Fellows and Student Day Workshop." The society issued a "Certificate of Attendance" confirming the petitioner's attendance at the workshop. The petitioner has not demonstrated that selection as one of 250 individuals for financial assistance to attend a training program is indicative of her influence in the field. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

The [REDACTED] awarded the petitioner second place at the 2007 [REDACTED] in Clinical Research competition. This award is an internal competition for junior

investigators working at the [REDACTED]. The petitioner has not demonstrated that this award is indicative of her wider influence in the field.

Finally, the petitioner submitted a "Certificate of Honour" the [REDACTED] issued to the petitioner in 1997. The hospital crossed out the preprinted words "has been awarded" and merely confirmed the petitioner's membership on the [REDACTED]. The record does not contain evidence regarding this committee, such as its duties. Thus, this certificate does not confirm the petitioner's influence in endocrinology as a whole. Moreover, the petitioner did not begin her training specific to endocrinology prior to 1997.

The petitioner completed her residency and postdoctoral residency fellowship in internal medicine at [REDACTED] a university hospital of [REDACTED]. On her curriculum vitae, the petitioner indicates that during this time she performed elective rotations at the [REDACTED]. She then served as a "Fellow in graduate training in Endocrinology, Diabetes & Metabolism" at the [REDACTED] through June 30, 2008, two months before filing the petition. In March 2008, the petitioner took an "intensive procedural certification course" at the [REDACTED]. As of the date of filing, the petitioner held a position as an "Associate Staff" member in the [REDACTED]. In July 2008, one month before the petitioner filed the petition, the [REDACTED] approved a study listing the petitioner as a co-principal investigator.

The petitioner submitted letters from the above facilities and more independent locations. [REDACTED] states that he is basing his opinion on the petitioner's "impressive CV, presentations, publications and research." As stated above, however, the petitioner worked at a [REDACTED] hospital. [REDACTED] discusses the impact of the diseases that endocrinologists treat. As discussed above, however, we do not contest the substantial intrinsic merit of the petitioner's occupation. [REDACTED] then discusses the prestige of the institutions where the petitioner has trained as an endocrinologist. The national interest waiver is not a blanket waiver for every individual who completes training at a prestigious institution. [REDACTED] then concludes that the importance of the petitioner's research is apparent from the publications in which it appeared and the conferences where she presented it. More persuasive than acceptance for presentation or publication, however, is the ultimate impact once published. [REDACTED] asserts that the petitioner's study "indicated that even prediabetes in patients with metabolic syndrome is a risk factor for death." Another reference, [REDACTED], a staff member at the [REDACTED], asserts that he worked with the petitioner on this study and that the study could not have been completed without her input. Neither [REDACTED], however, cites new guidelines issued based on this study or similar examples of its influence in the field.

[REDACTED] asserts that he does not base his letter on personal knowledge of the petitioner. [REDACTED] does not acknowledge that the petitioner performed rotations at the [REDACTED] where he has worked as an attending physician since 2002 and with which he has been affiliated since

1999. [REDACTED] asserts that the petitioner should be judged based on her ability to diagnose complex medical disorders which have baffled other physicians and perform challenging procedures. [REDACTED] concludes that on this basis, the petitioner, who only completed her training two months before filing the petition, "is one of the very few at the top of her field." USCIS need not accept primarily conclusory assertions.¹ [REDACTED] provides no examples of the petitioner diagnosing disorders that have "baffled" other endocrinologists or performing procedures that endocrinologists as a rule are incompetent to perform. With regard to her research, [REDACTED] asserts that the petitioner's study "implies that targeting even patients with prediabetes can help decrease the ultimate risk of death." Once again, [REDACTED] cites no new guidelines based on the petitioner's research or similar examples of its influence.

[REDACTED], praises the petitioner's skills in endocrinology subspecialty areas including obesity, diabetes, metabolic bone disorders, osteoporosis and pituitary disorders. [REDACTED] asserts that the petitioner's "expertise in the diagnosis and treatment of esoteric endocrine problems affecting the bone and adrenal glands" sets her apart from "most of the other endocrinologists." As an example, [REDACTED] notes the petitioner's treatment of patients with Cushing's syndrome, a rare disease caused by excessive production of the steroid hormone cortisol. [REDACTED] discusses the difficulty in diagnosing this disease and lists the procedures the petitioner is trained to perform. While the petitioner submitted articles discussing an overall shortage of endocrinologists, the record contains no articles expressing concern that the majority of endocrinologists who have completed their internships, residencies and fellowships are still unable to perform these medical procedures. As discussed above, the issue of whether there exists a shortage of endocrinologists falls under the jurisdiction of the Department of Labor. *Id.* at 221.

[REDACTED] provides an example of a patient the petitioner successfully treated. Specifically, the patient had diabetes and a neurological condition, requiring high doses of insulin through an insulin pump. [REDACTED] explains that this patient required close monitoring and asserts that "other endocrinologists would not have been able to proceed in this manner." As stated above, USCIS need not accept primarily conclusory assertions.² Regardless, even if the petitioner's familiarity with the insulin pump is somehow unique among endocrinologists, special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* Ultimately, anecdotal examples of patient treatment cannot demonstrate that the benefits of the petitioner's work as a physician will be national in scope.

[REDACTED] recent [REDACTED] recounts another anecdote where the hospital referred a patient to the petitioner for specific tests that she was able to successfully complete, ultimately resulting in a referral for successful laparoscopy surgery. Once again, this anecdote demonstrates the petitioner's competence as an endocrinologist with skills that can be

¹ 1756, *Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

² 1756, *Inc.*, 745 F. Supp. at 15.

enumerated on an application for alien employment certification. This example of a successful patient outcome does not explain why the alien employment certification process should be waived in the national interest. In a subsequent letter, [REDACTED] asserts that the petitioner's study "has directly led to improvements in patient care." We reiterate, however, that the record contains no new guidelines modified in response to the petitioner's study.

[REDACTED] at the [REDACTED] asserts that the petitioner's "expertise is constantly sought for extremely complex cases that often came on referral" from around the world. [REDACTED] continues: "This is due to her reputation as a revered specialist." The use of the passive and the use of the unmodified "this" makes these sentences somewhat ambiguous. It appears, however, that the [REDACTED] utilizes the petitioner's expertise on referrals and that the [REDACTED] does so because of her reputation within that institution. [REDACTED] does not suggest that the referring institutions refer patients specifically to the petitioner based on her reputation outside of the [REDACTED]. The record contains no evidence that the [REDACTED] on its website or in other official materials, promotes its endocrinology department as significant because of the petitioner's unique skills. Rather, the [REDACTED] website materials in the record merely listed the petitioner as one of the hospital's new staff appointments and include her education and training institutions in its physician directory.

The petitioner did submit more independent letters. [REDACTED] at the [REDACTED] asserts that he saw the petitioner's poster presentation on using teriparatide for osteoporosis at an [REDACTED] meeting and that he "can utilize this important research" in his own practice. [REDACTED] does not suggest that he has actually successfully used teriparatide based on the petitioner's research.

[REDACTED], discusses the complexity of endocrinology as a specialty. We are not persuaded that the national interest waiver was intended as a blanket waiver for every complex medical specialty, of which there are presumably several, or even just endocrinology. [REDACTED] then discusses the shortage of endocrinologists. We reiterate that the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

[REDACTED] asserts that the [REDACTED] sees complex diabetic patients undergoing transplants and cardiac bypass surgeries, requiring an intelligent and experienced physician to manage the blood sugar of these patients. [REDACTED] concludes that the petitioner is "among the few who have excelled in the treatment of diabetes of all complexities." [REDACTED] does not explain why other hospitals do not see surgical patients with diabetes and, thus, why the petitioner's experiences are unique. [REDACTED] then discusses a specific test and asserts that the petitioner "is one of the few who can use these effective and modern technologies to diagnose patients with serious diseases." Such a statement strongly implies that most experienced and trained endocrinologists are incapable of utilizing recent (essentially current) technology, a serious accusation that requires some support. Regardless, [REDACTED] does not suggest that the petitioner developed or expanded on these

techniques. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* Finally, [REDACTED] asserts that the petitioner has been "widely cited on the internet and used as a reference by other authors." As discussed above, the record contains only a single citation and two discussions, both with disclaimers, on the internet. [REDACTED] assertion regarding the citation of the petitioner's work, therefore, is sufficiently inconsistent with the record as to diminish his overall credibility.

[REDACTED] asserts that his evaluation is based on the petitioner's curriculum vitae, publications and presentations. [REDACTED] discusses the importance of diabetes treatment, which is not contested, and asserts that there is a shortage of endocrinologists, which, as stated above, is under the jurisdiction of the Department of Labor. *Id.* [REDACTED] concludes that the petitioner is a "prolific contributor to the field." [REDACTED] does not explain how two publications and four presentations constitute "prolific" contributions. [REDACTED] characterizes the petitioner's research as "groundbreaking" "astonishing" and "landmark." Research that rises to that level can be expected to have garnered some attention in the professional media. As discussed above, however, the reaction to the petitioner's research in the professional media has been minimal. Unsupported hyperbole cannot establish eligibility. [REDACTED] then reviews the petitioner's memberships, asserting that these memberships "are awarded to those physician-scientists who have attained an extraordinary level of expertise in endocrinology unparalleled by their colleagues." We have discussed the petitioner's memberships above, which are all open to trained endocrinologists. Even counsel concedes on appeal that the memberships are open to nearly all trained endocrinologists. [REDACTED] assertions are so inconsistent with the evidence of record as to diminish his overall credibility.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158,

165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain hyperbolic attestations of unique abilities without specifically identifying innovations and providing specific examples of how those innovations have influenced the field. Merely repeating the language of legal standards does not satisfy the petitioner's burden of proof.³ The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

As discussed above, the only aspect of the petitioner's work that is national in scope is her research. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

³ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).